

Remarks

Careful consideration has been given the Official Action dated May 27, 2004 in preparing this amendment. Reconsideration of Claims 1-21 is respectfully requested in light of the foregoing amendments and the remarks which follow.

In response to the election of species required by the Examiner, Applicant elects, with traverse, the invention of Species I, upon which Claims 1-8 read. It is respectfully submitted that the hands-free unit of Figs. 8 and 9 is not a species of the claimed invention but is, rather, an accessory attachable to, and usable with, the platform of Figs. 1-6. Accordingly, where, as in the case of Claims 9-19, the features of the hands-free unit are claimed in conjunction with the features of the steadying platform, the features of the accessory should be examined on their merits. In any event, it is respectfully submitted that, in that generic Claim 1 is allowable, the election should be withdrawn and the claims examined as a group.

Claims 1-8 have been rejected under 35 USC §112, second paragraph, as indefinite. It is the Examiner's position that

Claim 1, lines 10-12 cites, "its cargo". It is unclear what is meant by the term cargo. The claim was examined as if the claim cited a "camera".

Claim 5 contains the trademark/tradename "TEFLON". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. §112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe "a material containing a low friction plastic" and, accordingly, the identification/description is indefinite.

As it may be applied to the amended claims, this rejection is respectfully traversed.

Applicant's undersigned representative has made the requested changes and therefore, believes that the rejection is obviated. However, for the sake of future reference, both grounds of the §112 rejection were in error. Within the context of the claim, there was no uncertainty about the meaning of the term "its cargo". The Examiner demonstrated that fact by correctly inserting the term "camera". Accordingly, there was no indefiniteness to the claim. The second basis of the rejection is based on an antiquated notion that trademarks identify the source of goods. That was the case

some 20 years ago when *Ex parte Simpson* was decided. It is not the case today. Trademarks are identified with the goods and *not* the manufacturer thereof. It is particularly not the case as it relates to Teflon. Teflon appears in the dictionary, which, although it does note its status as a trademark, does not note the owner of the mark but only the characteristics of the material and some of its uses. It is respectfully submitted that this rejection was ill-founded, *ab initio*, and should never have been made.

Claims 1-4, 6-8 have been rejected under 35 USC §102(b) as anticipated by Hayden. It is the Examiner's position that

The patent to Hayden discloses a camera stead [sic] device having a support platform (33) and means (25, 27) for attaching a camera. (The camera is not considered as positively claimed, but merely as a functional statement of use). Hayden teaches a support shaft (3, 11) connected to the bottom surface of the platform, having a first upper portion (11), and a second lower portion (3), the first and second shafts being positionable within 60 degrees relative to each other and a locking mechanism (7) to lock them in place, a sphere (13) affixed to the upper portion of the support shaft (3, 11) which is permitted to pivot plus or minus 60 degrees about a roll and pitch axis and plus or minus 360 degrees about a yaw axis by being connected to a socket plate (15) has a first upper plate (17) with a first downwardly directed truncated spherical recess, the recesses which pivotally captures the sphere (13) in a socket with a handle (43, 49, 59) which has a straight portion (43) and an [sic] fifteen degree angled portion (59), and a balance plate (86) connected to a bottom portion of the support shaft.

As it may be applied to the amended claims, this rejection is respectfully traversed.

While it is believed that the Examiner may have stretched the reference a bit with regard to some of the limitations, her point that Claim 1 was not as specific to the invention as intended, is well taken and it is believed the rejection set forth, *supra*, corrects this problem.

Applicant's steadying camera support system is for a hand-held video camera; it is not a tripod for a conventional motion picture camera. The socket freely pivots about the ball under the force of gravity to maintain the platform (and, hence, the camera) level within the roll, pitch and yaw limits specified in the claim. It is believed that the claim now more particularly points out and distinctly claims that which Applicant regards as his invention, features not taught or suggested by any of the patents which the Examiner has cited. It is respectfully submitted that, as applied to the amended claims, this rejection is ill-founded and should be withdrawn.

Claim 5 has been rejected under 35 USC §103(a) as unpatentable over Hayden in view of

Donahue. It is the Examiner's position

Hayden discloses applicant's basic inventive concept, all the elements which are shown above with the exception that it does not show that the sphere is made of Teflon.

Donahue shows [sic] a joint having a sphere (62) that is made of Teflon, used for its low friction properties (See Col. 6, lines 20-24 for material selection). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Donahue to have made the sphere of Teflon in order to have a low friction point.

As it may be applied to the amended claims, this rejection is respectfully traversed.

The addition of Donahue to Hayden does nothing to remedy the deficiencies of the primary reference with regard to the limitations of parent Claim 1, 4. Further, while the use of a TEFLON ball for low resistance is not novel, there is no teaching or suggestion to use such a low resistance ball for a pivot of a steadying platform for a hand-held video camera, in the manner of the teaching of the present invention. Accordingly, it is respectfully submitted that this rejection is ill-founded and should be withdrawn.

It is respectfully submitted that Claims 1-21 meet the formal requirements set forth in 35 USC §112, define around the art of record and are, therefore, in condition for allowance. Early indication of allowability is earnestly solicited.

Respectfully submitted,



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Certificate of Mailing under 37 CFR §1.8

I hereby certify that this amendment to the above identified application entitled "" is being deposited with the United States Postal Service addressed to Commissioner for Patents, Mailstop Non-Fee Amendment, PO Box 1450, Alexandria, VA 22313-1450 with adequate first class postage on the date shown.

Signed Richard K. Thomson Date August 20, 2004